RSA No. 182 of 1996 and CMP No. 661 of 2007

23.8.2007 Present: Mr.Ashok Chaudhary, Addl. Advocate General, for the appellant.

Mr.G.D.Verma, Sr. Advocate, with Mr. Romesh Verma, Advocate, for the respondents

The present appeal has been filed against the judgment and decree dated 29.12.1995 in Civil Appeal No. 25-S/ 13 of 1995, titled as Sita Ram and another vs. State of H.P., whereby the District Judge reversed the judgment and decree dated 7.4.1995 passed by learned Sub Judge, Ist Class, Kandaghat, in Civil Suit No. 183/1 of 91, titled as Krishna Devi and another vs. State.

For the purposes of convenience, the appellant is referred as defendant and the respondents are referred as plaintiff.

In the suit, the plaintiff had prayed for declaration to the effect that order passed by the Collector in Case No. 10/13 of 1991 dated 9.9.1991 is illegal, without jurisdiction and contrary to the provisions of law as the plaintiff's right under Section 118 of the H.P. Tenancy and Land Reforms Act (hereinafter referred to as the Act) stands infringed. A decree for declaration that plaintiff is owner and in possession of the suit land was also prayed for.

The suit was dismissed and in an appeal, the lower Appellate Court, after perusing the entire material on record as also the provisions of the Act reversed the judgment and decree passed by the trial Court and decreed the suit of the plaintiff.

During the pendency of the present appeal, the plaintiff has moved an application under Order 6 Rule 17, CPC being CMP No. 661 of 2007 seeking amendment to the suit. It is pleaded in the application that the amendment pertains to the subsequent events, which had taken place on account of amendment in the Act. Admittedly, the suit land is situated in municipal boundaries of Municipal Committee, Solan and is not agricultural land nor subservient to agriculture purpose. The same is also not assessed to land revenue. According to the applicant, in view of the amendment in the Act no permission is now required to be obtained by a non-agriculturist where the land is to the extent of 500 meters.

By way of present application, the plaintiff seeks to incorporate para 6(a) in the plaint. The same is also reproduced as under:-

> "That the area in suit as entered against khasra No.2013/594, 595, 596, kitas 3, measuring 468 sq. meter, situated at Mauja Saproon, Tehsil and District Solan as per jamabandi for the year 1989-90 does not fall within definition of land. Neither this is agriculture land nor same is subservient to agriculture purpose. This area in suit is in shape of built up structure on the spot. The entries in the revenue record pertaining to this area are not correct according to the spot position. Since agreement for sale in respect of 468 sq. meters is not above the permissible limit of 500 sq. meters and also the fact that same does not fall within definition of land, therefore, proceedings as carried out by District Collector, Solan, are illegal, void and without jurisdiction. No permission is required to be obtained by a non-agriculturist with respect to 500 meters of area. Even otherwise, District Collector

> Solan, acted illegally and unlawfully by treating the Agreement for sale in violation of the provisions of H.P. Tenancy and Land Reforms Act. There is no such bar under Section 118 of the H.P. Tenancy and Land Reforms Act for execution of Agreement for Sale. Mere Agreement for sale even by delivery of possession does not create any interest in favour of the Purchaser. Therefore, District Collector Solan, has acted illegally and in violation of the provisions of law and therefore, the order as passed by her is liable to be set aside. Even otherwise, Agreement for sale between the parties is not only legal and valid but also same is bonafide."

Notice of the application was accepted by the learned Addl. Advocate General, appearing for the appellant-defendant and as agreed the application be decided on merits in accordance with law. According to him, permission, in any case, is required to be obtained in accordance with the provisions of the Act.

Learned counsel for the plaintiff, however, submits that the plaintiff(s) shall exercise his statutory right including moving an application for grant of permission to the concerned Authority in accordance with law and in any case the Collector ought to have forwarded the earlier application to the Government for permission.

The amendment sought for bringing on record subsequent events by way of present application being CMP No.661/2007, in my view, is absolutely necessary for the purpose of determination of real question of controversy between the parties. The plaintiff's rights under Section 118 of the Act need to be determined. Therefore, the present application is allowed. Amended plaint is taken on record. In this view of the matter, the matter is remanded back to the trial Court for consideration afresh.

Learned counsel for the appellant submits that the defendant shall file the written statement to the amended plaint in the trial Court, copy of which has been supplied to him, within 3 months from today.

Considering the fact that the case pertains to the year 1991, the learned Civil Judge, Kandaghat, District Solan, is directed to dispose of the matter as expeditiously as possible and preferably within 9 months from today.

As jointly requested, the parties shall appear before the trial Court on 24th September, 2007. Record of the case, if any, be sent back forthwith.

Conseqeuntly, for the aforesaid reasons and observations, judgment and decree dated 29.12.1995 passed by learned District Judge, Solan as well as judgment and decree dated 7.4.1995 passed by Sub Judge, Ist Class, Kandaghat, are set aside. The present appeal is also disposed of accordingly. All the Misc. applications are also disposed of.

23rd August, 2007 (Sanjay Karol), J.
(C)

23.8.2007 Present: Mr. Neeraj K. Sharma, Advocate, for the appellant.

Admit on the following substantial question of law:-

"Whether the suit for possession is maintainable without affixation of court fee?"

CMP No.642 of 2007

Four weeks time is granted for filing certified copy of the judgment of the trial Court.

CMP No.643 of 2007

Notice. The operation of the impugned judgment and decree is stayed till further orders. The parties shall also maintain status quo with regard to the suit land till further orders.

23rd August, 2007 (Sanjay Karol), J.
(C)

23.8.2007 Present: Mr. Sanjeev Kuthiala and Ms. Neelam Bansal, Advocates, for the appellants.

Admit on the substantial questions of law No. 2, 3 and 4 as framed at pages 10 and 11 of the paper book.

CMP No.640 of 2007

Four weeks time is granted for filing certified copy of the judgment of the trial Court.

CMP No.639 of 2007

Notice. The parties shall maintain status quo with regard to the suit land till further orders.

23rd August, 2007 (Sanjay Karol), J.
(C)

RFA No. 347 of 2006

23.8.2007 Present: Mr. Ashok Chaudhary, Addl. Advocate General, for appellants.

Mr.G.R.Palsra, Advocate, for respondents No.1 to 3 and for proposed LRs No. 4 (a) to 4(d).

As requested, further time of two weeks is granted to comply with the orders dated 4th July, 2006.

23rd August, 2007 (Sanjay Karol), J.
(C)

RFA No. 305 of 2003

23.8.2007 Present: Mr. Ashok Chaudhary, Addl. Advocate General, for the appellants.

Ms. Charu Gupta, Advocate, vice counsel for the respondlents.

Learned Addl. Advocate General undertakes to take steps for effecting service on the proposed legal representatives No.4(3) and 4(f). Thereafter, notices be issued for effecting service upon them.

List the matter after the service is complete.

23rd August, 2007 (Sanjay Karol), J.
(C)

RFA No. 430 of 1991

23.8.2007 Present: Mr. Ashok Chaudhary, Addl. Advocate General, for appellants No.1 and 2.
Mr.Sunit Goel, Advocate vice counsel for appellant No.3.

Mr.Y.Paul, Advocate, vice counsel for the respondent-applicant.

CMP No. 394 of 2007

At the request of learned counsel for the applicant, list after one week.

23rd August, 2007 (Sanjay Karol), J.
(C)